of the conflict between state and federal courts on the second point probably lies in the feeling on the part of Congress and federal courts that the revenue laws must be rigidly enforced even at the risk of imposing a hardship upon an innocent person occasionally, rather than create an opportunity for evasion of the law by exempting the property of such persons from its scope, while the state legislatures and courts do not consider such an ironclad forfeiture rule necessary to the adequate enforcement of the prohibition laws. On the first point, the instant case is a liberal interpretation of the statute and calculated to give full effect to the legislative intent.

MARRIAGE—FRAUD JUSTIFYING ANNULMENT.—Plaintiff and defendant, both of the Jewish faith, agreed to be married by a person other than a Rabbi, upon defendant's promise that they would afterwards have a Jewish wedding. A civil-marriage ceremony was then had, but the defendant later refused to have a Jewish wedding, saying he didn't believe in it and that they should live together without it. Plaintiff seeks to have this civil-marriage annulled on the grounds of fraud,—on the theory, that she would not have married the defendant, had he not so promised, and that the marriage was never consummated. *Held,* no fraud justifying annulment, there being no misrepresentation of an existing fact,—"he did not state that anything *was,* but only that something *would be.*" *Schacter* v. *Schacter* (1919), 178 N. Y. Supp. 212.

As a general rule, it must appear that there has been a misrepresentation as to a material fact, either past or present, upon which the plaintiff has relied, before the courts will annul the marriage contract. The defendant must have misrepresented that which *was,* and not that which *would be,* for a misrepresentation as to future facts is not regarded as legal fraud, justifying annulment of the marriage contract. *Farley* v. *Farley,* 94 Ala. 501; *Browning* v. *Browning,* 89 Kan. 98, Ann. Cas. 1914 C 1288, and note; *Di Lorenzo* v. *Di Lorenzo,* 174 N. Y. 467, 95 A. S. R. 609, note; also monographic note to *State* v. *Lowell,* 78 Minn. 166, 79 A. S. R. 358, p. 371. Though the plaintiff, as in this case, may regard marriage as a strictly religious ceremony, and consequently find himself or herself, as the case may be, in a very disagreeable and disquieting situation, still the law does not protect against a mere disturbance of religious convictions. It has been held that even though the defendant has made misrepresentations, as to past or present facts, which actually led to a marriage under conditions inconsistent with the plaintiff's beliefs and convictions, still no remedy will be given. *Clarke* v. *Clarke,* 11 Abb. Prac. 228; *Fiske* v. *Fiske,* 6 App. Div. 432.

MASTER AND SERVANT—HIRER OF TEAMS AND TEAMSTERS OF ANOTHER LIABLE FOR TEAMSTER'S NEGLIGENCE.—A coal company hired teams, drivers and wagon trucks from an ice company to deliver coal, Coal company furnishing wagon boxes and directing drivers where to get coal and where to deliver it. Ice company paid drivers and was paid by Coal company on basis of amount delivered. One of the drivers mired his wagon, and, in unhitching team to return it for the night to Ice company's stables, left wagon tongue

extending over sidewalk. In suit against both companies for injuries received through driver's negligent act, the non-suit of plaintiff with reference to Ice company was *held,* no error, since, in act of delivery, driver was servant of Coal company and it was liable, though driver remained in general employ of Ice company. One judge dissented. *Badertcsher* v. *Independent Ice Co. et al.* (Utah, 1919), 184 Pac. 181.

Majority opinion is based on general doctrine that servant of A may, for a particular purpose, be servant of B, though he continues to be the general servant of A, and is paid by him for his work. *Standard Oil Co.* v. *Anderson,* 212 U. S. 215; *Rourke* v. *White Moss Colliery Co.,* L. R. 2 C. P. Div. 205. A typical case under the general doctrine is where X manufacturing company hires its servant to Y power company to repair the machinery of the latter under its direction. Workman is the servant of the power company, while so engaged. *Delory* v. *Blodgett,* 185 Mass. 126. In the principal case, however, the dissenting opinion is with the weight of authority in recognizing a distinction that has always been made where a servant is deputed to perform work for another by means of instrumentalities belonging to general employer. 1 LABATT, MASTER AND SERVANT (2nd Ed.), § 53. In applying this rule to horse-drawn vehicles, the continuance of general employer's control over method of using vehicle, is in accord with weight of authority. LABATT, *supra,* § 54, and cases there cited. See also 37 L. R. A. 70-74. To fix liability, it is necessary to examine the particular act in which servant was engaged at the time. *Wm. C. Scribner's Case,* 231 Mass. 132. When driver, by negligence in management of team, injuries third person, general employer, as owner of team and wagon, is *prima facie* liable,—not the hirer. *Laugher* v. *Pointer,* 5 Barn. & C. 547; *Quarman* v. *Burnett,* 6 Mees. & W. 449, leading cases. See also *Hughes* v. *Boyer,* 9 Watts 556; *Crockett* v. *Calvert,* 8 Ind. 127. This applies where driver is performing service for hirer at the time. *Quinn* v. *Complete Electric Const. Co.,* 46 Fed. 506; *Joslin* v. *Grand Rapids Ice Co.,* 50 Mich. 516. Basis for decisions is the fact that the driver is intrusted by the owner with the control of the team, and is responsible only to owner for its management. *Huff* v. *Ford,* 126 Mass. 124; *Reagan* v. *Casey,* 160 Mass. 374. Responsibility of general owner has been extended even to manner of unloading and delivery of goods. *Higham* v. *T. W. Waterman Co.,* 32 R. I. 578. But if it appears that owner of team has given complete control to hirer by terms of agreement, hirer, and not general owner, is liable. *Brown* v. *Smith & Kelly,* 86 Ga. 274; *Philadelphia & R. C. & I. Co.* v. *Barrie,* 179 Fed. 50. As to whether hirer or general employer has control of team, following test has been suggested: could hirer have himself taken absolute control of vehicle, horse and harness, taking them altogether out of possession of driver? *Consolidated Plate Glass Co. of Canada* v. *Caston,* 29 Can. S. C. 624. See also instructions approved in *Hershberger* v. *Lynch* (Pa., 1887), 11 Atl. 642. Although driver may be ordered by those who dealt with his master to go to this place or that, to take this or that burden, to hurry or to take his time, nevertheless, in respect to the manner of his driving and the control of his team, he remains subject to no orders but

those of the man who pays him. *Driscoll* v. *Towle,* 181 Mass. 416. See, generally, *Sargent Paint Co.* v. *Petrovitzky* (Ind., 1919), 124 N. E. 881.

NEGLIGENCE PER SE—VIOLATION OF SPEED ORDINANCE—PROXIMATE CAUSE.—A motorcycle rider was injured through the negligence of the driver of an automobile at a street intersection. Both vehicles were exceeding the authorized speed of ten miles per hour. *Held,* the motorcycle rider was guilty of contributory negligence *per se* by violation of the ordinance and could not recover, his negligence being the proximate cause of the injury. *Dowdell* v. *Beasley* (Ala., 1919), 82 So. 40.

The better rule is that violation of such an ordinance is not negligence *per se* but is merely evidence of negligence. *Scott* v. *Dow,* 162 Mich. 636. Some courts have gone so far as to consider such a violation no evidence of negligence. *Ford's Adm'r* v. *Paducah City Ry.,* 124 Ky. 488. However, the failure to stop an automobile at a railroad crossing may be negligence *per se. Earle* v. *P. & R. Ry. Co.,* 248 Pa. 193. So also, the failure to slow down before crossing a street-car track, the presence of which is known, is sufficient evidence on which to direct a verdict. *Westcott* v. *Waterloo etc. Ry. Co.,* 173 Iowa 355. The decision in the principal case is fully supported in many jurisdictions, *Schell* v. *DuBois,* 94 Ohio St. 93, but it is to be justified rather on ground of *proximate cause* than on the ground of negligence *per se,* Cf. 17 MICH. L. REV. 275, 3 COLUMBIA L. R. 344, 10 ib 367, 19 HARV. L. R. 288, 10 N. C. C. A. 820, 13 ib. 982.

NUISANCE—RESPONSIBILITY FOR ACTS OF THIRD PARTIES—INJUNCTION—EXECUTIVE INTERFERENCE—THE GERMAN OPERA CASE.—Plaintiff corporation, organized for the purpose of giving musical performances, had contracted to give a series of operas in German during the season of 1919-1920. There was much public hostility to the proposed project, and, before the first performance, the mayor of the city, on petition of the American Legion, allowed a hearing to those who favored and those who opposed the proposed performances. The opening performances produced riotous demonstrations, which necessitated calling out large bodies of police, and resulted in various severe injuries. The mayor having subsequently prohibited these performances until the peace treaty should be ratified, the plaintiff secured an injunction *pendente lite,* restraining the mayor. This case comes up on a motion of the plaintiff to continue this injunction *pendente lite. Held,* the mayor could prohibit such performances as these, and the court denied the motion of the plaintiff corporation, at the same time vacating the temporary restraining order. *Star Opera Co., Inc.* v. *Hylan et al.* (1919), 178 N. Y. S. 179.

Many jurisdictions admit the fact that an act, innocent in itself, may at times be carried on under such circumstances as to become a nuisance. *Boston Ferrule Co.* v. *Hills,* 159 Mass. 147; *Kissel* v. *Lewis,* 156 Ind. 233; *Cronin* v. *Bloemecke,* 58 N. J. Eq. 313; *Harrison* v. *The People,* 101 Ill. App. 224. These cases show that a lawful act will be enjoined, if and when it becomes a nuisance, either by indictment or by private bill; but the case under discussion differs from these, and is peculiar, in that it is not the acts